(10) Food stamps and emergency rental and utilities assistance; and

(11) SSI, SSDI, or Social Security.

[61 FR 8815, Mar. 5, 1996, as amended at 65 FR 16731, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16731, Mar. 29, 2000, in § 984.103 paragraph (a) was revised, paragraph (b) was amended by removing the parenthetical phrase from the definition of ''Earned income'', removing the definition of ''PHA'', and revising the definitions of ''Low income family'' and ''welfare assistance'', effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 984.103   Definitions.

(a) The terms *1937 Act, Fair Market Rent, HUD, Indian Housing Authority (IHA), Public Housing Agency (PHA), Secretary,* and *Section 8,* as used in this part, are defined in 24 CFR 5.100.

(b) * * * (See 24 CFR 813.106(b)(1), (2) and (8) and 913.106(b)(1), (2) and (8).) * * *

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PHA means a Housing Authority—either a Public Housing Agency (PHA) or an Indian Housing Authority (IHA).

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Low-income family. See definitions in 24 CFR 813.102 and 913.102.

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Welfare assistance means income assistance from Federal or State welfare programs, and includes assistance provided under the Aid to Families with Dependent Children (AFDC) Program, Supplemental Security Income (SSI) that is subject to an income eligibility test; Medicaid, food stamps, general assistance, or other assistance provided under a Federal or State program directed to meeting general living expenses, such as food, health care, child care, but does not include assistance solely directed to meeting housing expenses, and does not include transitional welfare assistance provided to JOBS participants.

§ 984.104   Basic requirements of the FSS program.

An FSS program established under this part shall be operated in conformity with:

(a) The regulations of this part, and for a Section 8 FSS program, the rental certificate and rental voucher regulations, codified in 24 CFR parts 882, 887, and 982 respectively, and for a public housing FSS program, the applicable public housing regulations, including the regulations in 24 CFR parts 913, 960, and 966;

(b) An Action Plan, as described in § 984.201, and provide comprehensive supportive services as defined in § 984.103; and

(c) An FSS program established under this part shall be operated in compliance with the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5, with the exception of Executive Orders 11246, 11625, 12432, and 12138.

§ 984.105   Minimum program size.

(a) *FSS program size.* (1) *Minimum program size requirement.* A PHA must operate an FSS program of the minimum program size determined in accordance with paragraph (b) of this section.

(2) *Exception or reduction of minimum program size.* Paragraph (c) of this section states when HUD may grant an exception to the minimum program size requirement, and paragraph (d) states when the minimum program size may be reduced.

(3) *Option to operate larger FSS program.* A PHA may choose to operate an FSS program of a larger size than the minimum.

(b) *How to determine FSS minimum program size.* (1) *Public housing.* The minimum size of a PHA's public housing FSS program is equal to the number of public housing units specified below:

(i) The total number of public housing units reserved in FY 1993 through October 20, 1998; plus

(ii) The number of public housing units reserved in FY 1991 and FY 1992 under the FSS incentive award competitions; minus

(iii) The number of families that have graduated from the PHA's public housing FSS program on or after October 21, 1998, by fulfilling their FSS contract of participation obligations.

(2) *Section 8.* The minimum size of a PHA's Section 8 FSS program is equal to the number of Section 8 certificate and voucher program units as calculated below:

(i) *Units included.* (A) The number of rental certificates and rental voucher units reserved under the combined FY

1991/1992 FSS incentive award competition; plus

(B) The number of additional rental certificates and rental voucher units reserved in FY 1993 through October 20, 1998 (not including the renewal of funding for units previously reserved), minus such units that are excluded from minimum program size in accordance with paragraph (b)(2)(ii) of this section; minus

(C) The number of families who have graduated from the PHA's Section 8 FSS program on or after October 21, 1998, by fulfilling their contract of participation obligations.

(ii) *Units excluded.* When determining a PHA's minimum Section 8 FSS program size, funding reserved in FY 1993 through October 20, 1998 for the following program categories is excluded (except as provided in paragraph (b)(2)(ii)(B) of this section):

(A) Funding for families affected by termination, expiration or owner opt-out under Section 8 project-based programs;

(B) Funding for families affected by demolition or disposition of a public housing project or replacement of a public housing project;

(C) Funding for families affected by conversion of assistance from the Section 23 leased housing or housing assistance payments programs to the Section 8 program;

(D) Funding for families affected by the sale of a HUD-owned project; and

(E) Funding for families affected by the prepayment of a mortgage or voluntary termination of mortgage insurance.

(3) *Maintaining minimum program size.* The minimum program size for a PHA's public housing or Section 8 FSS program is reduced by one slot for each family that graduates from the FSS program by fulfilling its FSS contract of participation on or after October 21, 1998. If an FSS slot is vacated by a family that has not completed its FSS contract of participation obligations, the slot must be filled by a replacement family which has been selected in accordance with the FSS family selection procedures set forth in § 984.203.

(c) *Exception to program operation.* (1) Upon approval by HUD, a PHA will not be required to establish and carry out a public housing or a Section 8 FSS program if the PHA provides to HUD a certification, as defined in § 984.103, that the establishment and operation of such an FSS program is not feasible because of local circumstances, which may include, but are not limited to:

(i) Lack of accessible supportive services funding, including lack of the availability of programs under JTPA or JOBS;

(ii) Lack of funding for reasonable administrative costs;

(iii) Lack of cooperation by other units of State or local government; or

(iv) Lack of interest in participating in the FSS program on the part of eligible families.

(2) An exception will not be granted if HUD determines that local circumstances do not preclude the PHA from effectively operating an FSS program that is smaller than the minimum program size.

(d) *Reduction in program size.* Upon approval by HUD, a PHA may be permitted to operate a public housing or a Section 8 FSS program that is smaller than the minimum program size if the PHA provides to HUD a certification, as defined in § 984.103, that the operation of an FSS program of the minimum program size is not feasible because of local circumstances, which may include, but are not limited to:

(1) Decrease in or lack of accessible supportive services, including decrease in the availability of programs under JTPA or JOBS;

(2) Decrease in or lack of funding for reasonable administrative costs;

(3) Decrease in or lack of cooperation by other units of State or local government;

(4) Decrease in or lack of interest in participating in the FSS program on the part of eligible families.

(e) *Expiration of exception.* A full or partial exception to the FSS minimum program size requirement (approved by HUD in accordance with paragraph (c) or (d) of this section) expires three years from the date of HUD approval of the exception. If a PHA seeks to continue an exception after its expiration, the PHA must submit a new request and a new certification to HUD for consideration.

(f) *Review of certification records.* HUD reserves the right to examine, during its management review of the PHA, or at any time, the documentation and data that a PHA relied on in certifying to the unfeasibility of its establishing and operating an FSS program, or of operating an FSS program of less than minimum program size.

[61 FR 8815, Mar. 5, 1996, as amended at 65 FR 16732, Mar. 20, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16732, Mar. 29, 2000, § 984.105 was amended by revising paragraphs (a) and (b), redesignating paragraph (e) as (f), and adding a new paragraph (e), effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 984.105 Minimum program size.

(a) *General.* Unless otherwise excepted from operation of an FSS program as provided in paragraph (c) of this section, or from operation of an FSS program of the minimum size as provided in paragraph (d) of this section, a PHA shall operate an FSS program of the minimum size as determined in this section.

(1) *Determining minimum program size.* The minimum size of a FSS program:

(i) For a public housing FSS program, is equal to:

(A) The total number of public housing units reserved in FY 1993, and each subsequent FY; plus (if applicable)

(B) The number of public housing units reserved in FY 1991 and FY 1992 under the FSS incentive award competitions;

(ii) For a Section 8 FSS program, is equal to:

(A) The total number of rental certificates and rental vouchers reserved in FY 1993, and each subsequent FY; plus (if applicable)

(B) The number of rental certificates and rental vouchers reserved under the combined FY 1991/1992 FSS incentive award competition.

(2) *Applicable units and certificates and vouchers.* In determining minimum program size, for a public housing FSS program, all new public housing rental units reserved will be counted and, for a Section 8 FSS program, all rental certificates and rental vouchers reserved will be counted, except those used to replace rental certificates or rental vouchers (renewals).

(b) *Maintaining minimum program size.* As the contracts of participation for FSS families are completed or terminated, replacement FSS families must be selected to maintain the minimum program size. A replacement family must be selected in accordance with the FSS family selection procedures set forth in § 984.203.

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Subpart B—Program Development and Approval Procedures

§ 984.201 Action Plan.

(a) *Requirement for Action Plan.* A PHA must have a HUD-approved Action Plan that complies with the requirements of this section before the PHA implements an FSS program, whether the FSS program is a mandatory or voluntary program.

(b) *Development of Action Plan.* The Action Plan shall be developed by the PHA in consultation with the chief executive officer of the applicable unit of general local government, and the Program Coordinating Committee.

(c) *Plan submission*—(1) *Initial submission*—(i) *Mandatory program.* Unless the dates stated in paragraph (c) of this section are extended by HUD for good cause, a PHA that is establishing its first FSS program must submit an Action Plan to HUD for approval within 90 days after the PHA receives notice from HUD of:

(A) Approval of the PHA's application for incentive award units; or

(B) Approval of other funding that establishes the obligation to operate an FSS program, if the PHA did not receive FSS incentive award units.

(ii) *Voluntary program.* The PHA must submit its Action Plan and obtain HUD approval of the plan before the PHA implements a voluntary FSS program, including a program that exceeds the minimum size for a mandatory program.

(2) *Revision.* Following HUD's initial approval of the Action Plan, no further approval of the Action Plan is required unless the PHA proposes to make policy changes to the Action Plan or increase the size of a voluntary program; or HUD requires other changes. The PHA must submit any changes to the Action Plan to HUD for approval.

(d) *Contents of Plan.* The Action Plan shall describe the policies and procedures of the PHA for operation of a local FSS program, and shall contain, at a minimum, the following information: